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## RECENT IMPORTANT DECISIONS

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**ACKNOWLEDGMENT—LIABILITY OF NOTARY.**—Where the defendant, a notary, certified that certain impersonators of the grantors were known to him, and that they were the persons who executed the deeds, and the plaintiff who accepted the deeds as security for a loan in reliance upon the certificate of the notary was defrauded, *held*, the defendant was guilty of negligence and must respond in damages for not fulfilling the requirements of Sec. 1185 of the Civil Code: that "the acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument." Something affirmative in the nature of evidence of the grantor's identity must appear, as an association with him in his relation to other people. Informal introductions and occasional meetings are not enough. *Anderson v. Aronsohn* (Cal., 1919), 184 Pac. 12.

In a similar case, occurring about the same time, the District court of Appeals of California sought to absolve the notary on the ground that the fictitious grantor, whose name appeared in the deed, and the real owner of the property were not one and the same person; but, in review, the Supreme Court called attention to the fact that the decision was affirmed solely on the ground that any negligence of the notary was not the proximate cause of the loss. *Brown v. Rives et al.* (Cal.), 184 Pac. 32. All the decisions agree that, where the notary knowingly or intentionally certifies to a false acknowledgment, he renders himself liable for losses resulting. *People ex rel. Curtis v. Colby*, 39 Mich. 456. The authorities are divided as to the liability of the notary for negligence, depending on whether the notary is deemed to be acting in a judicial or a ministerial capacity. Those courts which adopt the former view hold that the notary is not liable for negligence. *Commonwealth v. Haines*, 97 Pa. St. 228. The weight of authority, however, as well as the weight of reason is with the view that the act of the notary in taking an acknowledgment is ministerial in character. 1 CORPUS JURIS 810; *Commonwealth v. Johnson*, 123 Ky. 437, 13 Ann. Cases 716. Under this view, the notary is held liable if he fails to exercise due care in certifying the acknowledgment, and his negligence is the proximate cause of the loss. *Joost v. Craig*, 131 Cal. 504; *State v. Meyer*, 2 Mo. App. 413; *Commonwealth v. Johnson*, *supra*; *DEVLIN, DEEDS*, Sec. 527a. *Contra*, if the remote cause. *Brown v. Rives*, *supra*. But, it need not be the sole cause. *State v. Meyer*, *supra*; *Homan v. Wayer*, 9 Cal. App. 123, 127. If the plaintiff is guilty of contributory negligence, the notary is absolved. *Oakland Savings Bank v. Murphy*, 68 Cal. 455; *Hatton v. Holmes*, 97 Cal. 208; *People v. Cole*, 139 Mich. 312. But, the fact that the plaintiff has relied solely on the certificate of the notary is not deemed to be such contributory negligence as will bar a

recovery. *Joost v. Craig, supra*; *Homan v. Wayer, supra*. The notary is not bound to certify as to the title. *Overacre v. Blake*, 82 Cal. 77, 80. Nor guarantee the correctness of his certificate. *DEVLIN, DEEDS*, Sec. 527e.

**AUTOMOBILES—CROSSING ACCIDENT—UNREGISTERED OWNER—VIOLATION OF STATUTE.**—In an action by the owner of an automobile, not registered as required by statute, for damages to said vehicle as a result of defendant's alleged negligence in not taking proper precautions to avoid the injury, which consisted in a collision between the machine and defendant's train, it was *held* that the violation of the statute as to such registration does not, in itself, preclude a recovery. *Gilman v. Central Vermont Ry. Co.* (Vt., 1919), 107 Atl. 122.

In construing a similar statute of Massachusetts, from which the Vermont statute was taken bodily, the Massachusetts court has held in a series of cases, beginning with *Dudley v. Northampton St. Ry. Co.*, 202 Mass. 443, that the Legislature intended to outlaw unregistered automobiles and to give them, as to persons lawfully using the highways, no other right than that of being exempt from wanton or willful injury. It is worthy of notice, moreover, that in the same jurisdiction the court refused to extend that strict rule to cases of injuries by or to registered machines when operated by a person not licensed according to statute. *Bourne v. Whitman*, 209 Mass. 155. See also *Lindsay v. Cecchi*, 24 Del. 185. Connecticut refused to follow the doctrine of the *Dudley case, supra*, in *Hemming v. New Haven*, 82 Conn. 661, because the Connecticut statute merely imposed a penalty for failure to register, whereas the statute of Massachusetts expressly forbade the use of the state's highways by such unregistered cars. *Stats. Mass.* 1903, c. 473, Sec. 3. This distinction is a mere play on words, and shows that the courts will seize upon the least straw as an excuse for not following the Massachusetts rule. Well might the Connecticut court have held flatly against that rule, as did the Vermont court in the instant case, which would appear to be sound, considering the general proposition that, in order to put a person doing an unlawful act beyond the pale of the law for the purpose of a recovery by or against him, the unlawful act must have a causal connection with the injury suffered. 2 R. C. L. 1208. In accord with the principal case are *Atlantic Coast Line R. Co. v. Weir*, 63 Fla. 69, and *Hyde v. McCreery*, 145 N. Y. App. Div. 729.

**BUILDING RESTRICTION COVENANTS—NUISANCE—PUBLIC GARAGE.**—In an action by property owners in exclusively residence district to restrain owner of a ten car storage garage from enlarging it to a twenty-four car storage garage, it appearing that there was a building restriction common to the neighborhood that "There shall not be erected any establishment for any offensive business," it was *held*, that since the garage will occasion noises, smoke and odors, all of which will lessen the peaceable enjoyment and value of complainant's property and increase the rates of insurance and other bur-